

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 9, 2007 Session

IN RE: SENTINEL TRUST COMPANY

Appeal from the Chancery Court for Lewis County
No. 4781 J. Steven Stafford, Chancellor

No. M2006-01002-COA-R3-CV - Filed on April 26, 2007

Former officers and directors of Sentinel Trust Company, the assets of which were seized in liquidation proceedings pursuant to Chapters 1 and 2 of Title 45 of the Tennessee Code, present this appeal to challenge the sale by the Commissioner of Financial Institutions of Sentinel's corporate headquarters in Hohenwald, Tennessee. The appellants contend the Commissioner was constrained by Tenn. Code Ann. § 45-2-1502(c)(2) to sell Sentinel's assets to "another state or national bank or to the Federal Deposit Insurance Corporation." We have determined the appellants' reliance on the above statute is misplaced because another section, Tenn. Code Ann. § 45-2-1504, empowers the Commissioner to sell assets of a trust company in liquidation "with the approval of the court." Finding the Commissioner followed the proper procedures to place the trust company in liquidation, following which the Commissioner properly marketed and advertised the asset at issue for sale, after which the Commissioner accepted an offer and obtained court approval to sell, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Carrol D. Kilgore, Nashville, Tennessee, for the appellants, Sentinel Trust Company, Danny N. Bates, Clifton T. Bates, and Gary L. O'Brien.

Robert E. Cooper, Jr., Attorney General and Reporter; and Janet M. Kleinfelter, Senior Counsel; and J. Graham Matherne, Nashville, Tennessee, for the Acting Commissioner-in-Possession Greg Gonzales and Receivership Management, Inc., Receiver for Sentinel Trust Company.

OPINION

Sentinel Trust Company was a Tennessee corporation operating as a trust company with its former headquarters in Hohenwald, Tennessee. In December of 1999, the Commissioner commenced a formal examination of Sentinel's business practices and financial situation to ensure

Sentinel's compliance with the Tennessee Banking Act.¹ The Commissioner subsequently examined Sentinel in January 2001 for the year ending in December 2000, April 2002 for the year ending December 2001, and June 2003 for the year ending December 2002. These examinations revealed a host of problems with Sentinel's business practices including, *inter alia*, unreconciled accounts, the commingling of Sentinel's Trust Department and company's cash in the same bank account, the payment of company expenses from the Trust Department Account, and the admission from Mr. Bates, Sentinel's President, in April 2004 that Sentinel had a deficit fiduciary cash position of approximately \$7.25 million.

Based on these findings and the admissions from Sentinel's President, the Commissioner issued an emergency cease and desist order and a Notice of Charges against Sentinel on May 3, 2004. By May 18, 2004, the situation with Sentinel had further deteriorated, and the Commissioner took control of Sentinel using armed officers and provided notice to the Chancery Court of the action taken. The Commissioner determined this action was necessary to protect the bond issuers and bondholders. This same day, the Commissioner also appointed Receiver Management, Inc. to act as the Receiver of Sentinel.

The Receiver investigated Sentinel's financial status and ultimately determined that Sentinel was insolvent in an amount of at least \$6,225,445 as of May 18, 2004. Based on this information, the Commissioner determined it was necessary and appropriate to liquidate Sentinel and filed the requisite Notice of Liquidation of Sentinel Trust Company. The Commissioner's initial efforts to liquidate Sentinel included the sale of real property located in Davidson County.

In July 2004, several former officers and directors of Sentinel filed a Petition in the Chancery Court for Davidson County seeking judicial review of the Commissioner's decisions to seize and liquidate Sentinel. The Chancery Court upheld the actions of the Commissioner including the sale of the Davidson County property. The officers and directors appealed, following which we affirmed the Chancery Court and the actions of the Commissioner. *See In re Sentinel Trust Co.*, 206 S.W.3d 501 (Tenn. Ct. App. 2005) (hereinafter *Sentinel I*).

After *Sentinel I*, the Commissioner moved forward with his efforts to complete the liquidation of Sentinel. The asset which is the subject of this appeal is the real estate and office building located thereon in downtown Hohenwald, Tennessee where Sentinel's headquarters were formerly located. The Receiver, who had been appointed prior to *Sentinel I*, listed the property for sale with a real estate company. The initial asking price was \$1.1 million, which price was based on Sentinel's records and estimates of what it cost Sentinel to construct the building. After the first five months, no offers had been made on the property. Thereafter, the property was placed on another listing service and it was additionally advertised in a by-monthly publication with a

¹In April of 1999, the Tennessee General Assembly amended the Tennessee Banking Act to extend its application to trust companies like Sentinel. This amendment went into effect on July 1, 1999. Thereafter, the Tennessee Banking Act applied to Sentinel and, as a consequence, Sentinel came within the jurisdiction of the Commissioner of the Tennessee Department of Financial Institutions.

subscription base of approximately 25,000 commercial real estate agencies across Tennessee. These listings failed to attract any interest at or near the listed price of \$1.1 million.

Shortly thereafter, a Robert and Aieyoung Allen of Kissimmee, Florida expressed interest in the property and entered into negotiations with the Receiver. An appraiser familiar with the Hohenwald market was retained who rendered an opinion that the fair market value on the property was \$430,000. Negotiations continued following which the Allens made an offer to purchase the property for \$450,000. On March 20, 2006, the Receiver and the Allens entered into a Commercial Purchase and Sale Agreement, which was subject to court approval.

On March 22, the Commissioner filed a Motion for Approval of Sale of Sentinel Trust Hohenwald, Tennessee Property. The motion was set for hearing on April 12, 2006. The day before the hearing on the Commissioner's motion to sell the property, Danny Bates, Clifton Bates and Gary O'Brien, former officers and directors of Sentinel, filed an objection to the Motion. The Chancery Court conducted a hearing on the Motion on April 12, 2006, following which the court granted the motion to sell the property for \$450,000 to the Allens. This appeal followed.

ANALYSIS

Appellants raise several issues on appeal including, *inter alia*, whether the trial court had jurisdiction to approve the sale of Sentinel's Hohenwald property. Sentinel challenges the trial court's jurisdiction on several grounds arguing that such exercise exceeded the trial court's jurisdiction because the law authorizing the Commissioner to seize a financial institution and appoint a receiver does not authorize such power over trust companies; no due process hearing was afforded Sentinel prior to the seizure of its properties; the Commissioner's claim that Sentinel was insolvent was false; the Commissioner lacked legal authority to seize Sentinel because the enforcement of Sentinel's fiduciary obligations is solely a judicial power, and assuming the Commissioner had authority to sell Sentinel's assets, the statute only permitted the sale to another state or federal bank or the Federal Deposit Insurance Corporation. Sentinel also challenges the constitutionality of the Tennessee Banking Act on the grounds that it vests the Commissioner, a member of the executive branch of government, with powers that may only be vested in the judiciary. Lastly, Sentinel contends the trial court lacked the jurisdiction to approve the sale to a buyer other than another state or national bank or the Federal Deposit Insurance Corporation.

With the exception of the last issue, each issue presented by Appellants was addressed by this Court in *Sentinel I*. See *In re Sentinel Trust*, 206 S.W.3d 501. Our previous rulings in this matter constitute the law of the case. See *Memphis Publ'g Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303 (Tenn. 1998). Accordingly we will not revisit those issues. We will however touch upon some of the related subjects to set the stage for the issue at hand, that being whether the Commissioner had the authority to sell the real estate formerly owned by Sentinel to a buyer other than another a state or national bank or the Federal Deposit Insurance Corporation.

In 1999, the General Assembly amended the Tennessee Banking Act (the “Act”) through the enactment of Public Chapter 112, which modified Tenn. Code Ann. § 45-1-124(d) by adding “trust companies” to the statutory scheme of the Act. *See Sentinel I*, 206 S.W.3d at 520-21. “Therefore, T.C.A. § 45-2-1502, which authorizes the Commissioner to take possession of a state bank under certain circumstances, also vests in the Commissioner the full authority to take possession of a Tennessee trust company under the same set of circumstances.” *Id.* (footnote omitted). Accordingly, the Commissioner has the statutory authority to seize trust companies such as Sentinel pursuant to Chapters 1 and 2 of Title 45 of the Tennessee Code.

The Act authorizes the Commissioner to seize the property of a trust company and appoint a receiver to oversee a reorganization of the institution, with the Commissioner “in possession,” or the Commissioner may liquidate an insolvent trust company.² As it clearly states,

[t]he commissioner shall be vested with the full and exclusive power of management and control, including the power to continue or to discontinue the business, to stop or to limit the payment of its obligations, to employ any necessary assistants, to execute any instrument in the name of the bank, to commence, defend and conduct in its name any action or proceeding in which it may be a party, to terminate the commissioner's possession by restoring the bank to its board of directors, *to appoint a receiver to have all of the rights, powers, duties and obligations granted to the commissioner in possession for the purpose of liquidation or reorganization*, and to reorganize or liquidate the bank in accordance with §§ 45-2-1503 and 45-2-1504.

Tenn. Code Ann. § 45-2-1502(b)(2)(emphasis added).

The Commissioner made the determination in May of 2004 that Sentinel was insolvent after the findings of the investigation revealed Sentinel’s unreconciled accounts, the commingling of Sentinel’s Trust Department and company’s cash in the same bank account, the payment of company expenses from the Trust Department Account, and the admission from Mr. Bates, Sentinel’s President, in April 2004 that Sentinel had a deficit fiduciary cash position of approximately \$7.25 million.

If the commissioner determines to liquidate the state bank, the commissioner shall give such notice of such determination to the directors, stockholders, depositors and known creditors. Upon a determination to liquidate, the commissioner may, with ex parte approval of the court in which the notice of possession was filed, sell all or any

²Pursuant to the Act, the Commissioner had authority to seize Sentinel’s assets without affording Sentinel a hearing because “[t]he Commissioner may take emergency possession of a state bank or trust company, without a preliminary hearing, if the additional criterion stated in T.C.A. § 45-2-1502(c)(1) exists.” *Id.* at 523. As the Act provides, “If, in the opinion of the commissioner, an emergency exists which will result in serious losses to the depositors, *the commissioner may take possession of a state bank without a prior hearing.*” Tenn. Code Ann. § 45-2-1502(c)(1)(emphasis added). The Act also affords any person aggrieved and directly affected by this action a remedy, that being a review by certiorari as provided in title 27, chapter 9. Tenn. Code Ann. § 45-2-1502(c)(1).

part of the state bank's assets to another state or national bank or to the Federal Deposit Insurance Corporation. The commissioner may also, with ex parte approval of the court, borrow from the Federal Deposit Insurance Corporation any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing bank and may assign any part or all of the assets of the state bank as security for such loan.

Tenn. Code Ann. § 45-2-1502(c)(2).

It is the foregoing authority upon which Appellants rely to contend the Commissioner was constrained to sell the assets of Reliance to another state or national bank or to the Federal Deposit Insurance Corporation. Appellants' singular reliance on the above statute is misplaced for two reasons. One, the statute does not mandate the sale of assets "to a state or federal bank of the Federal Deposit Insurance Corporation," rather it provides that such a sale is permissive. This is evident from the phrase, "may sell."³ Two, Appellants fail to acknowledge the principle of statutory construction that requires us to construe statutes *in pari materia* with reference to each other. In this vein, it is essential that we acknowledge the additional authority vested in the Commissioner pursuant to Tenn. Code Ann. § 45-2-1502(b)(2) and § 45-2-1504.

the commissioner shall be vested with the full and exclusive power of management and control, including the power to continue or to discontinue the business, . . . to terminate the commissioner's possession by restoring the bank to its board of directors, *to appoint a receiver to have all of the rights, powers, duties and obligations granted to the commissioner in possession for the purpose of liquidation . . . , and to . . . liquidate the bank in accordance with §§ 45-2-1503 and 45-2-1504.*

Tenn. Code Ann. § 45-2-1502(b)(2)(emphasis added). The last part of this section compels us to look at Tenn. Code Ann. § 45-2-1504, which reads:

(a) In liquidating a state bank, the commissioner may exercise any power of the office of commissioner, but shall not, without the approval of the court in which notice of possession has been filed: (1) Sell any asset of the organization having a value in excess of five hundred dollars (\$500); . . .

Tenn. Code Ann. § 45-2-1504(a)(1).

These two statutes clearly provide that the Commissioner was not constrained to sell the assets at issue to another state or national bank or to the Federal Deposit Insurance Corporation;

³To determine legislative intent, we must look to the natural and ordinary meaning of the language in the statute, and we must also examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *T.R. Mills Contractors, Inc. v. WRH Enters., LLC*, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002).

instead they expressly authorize the Commissioner to sell such assets to others provided the Commissioner obtains court approval pursuant to Tenn. Code Ann. § 45-2-1504(a)(1). The Commissioner followed the appropriate procedures for seizing a trust company and selling its assets pursuant to the Tennessee Banking Act. Furthermore, the Commissioner sought and obtained court approval for the sale of the asset at issue. We therefore conclude the sale of the Hohenwald property was proper in all respects.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the appellants, Clifton T. Bates, Danny N. Bates, and Gary L. O'Brien.

FRANK G. CLEMENT, JR., JUDGE